



Friday, April 12, 1996

Mr. William F. Caton,
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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Re: Preemption of nongovernmental restrictions on Satellite Earth Stations,
IB Docket No. 95-59

Dear Mr. Caton:

We write in response to the FCC's Report and Order and Further Notice of Proposed Rulemaking released on March 11, 1996, regarding preemption of certain local regulation of satellite earth station antennas, and proposing to prohibit enforcement of nongovernmental restrictions on such antennas that are less than one meter in diameter (the "FNPRM"). We enclose six (6) copies of this letter, in addition to this original.

First Capital Property Group, Inc. is in the commercial and real estate business. We manage several commercial properties in the Orlando and Central Florida area. We are a small business.

PROPERTY RIGHTS

We are concerned that the proposed rule prohibiting enforcement of nongovernmental restrictions will adversely affect the conduct of our business without justification and needlessly raise additional legal issues. We question whether the Commission has the authority to require us to allow the physical invasion of our property in this way. It is imperative that we retain the authority to control the use of our property, for several reasons.

MARKETABILITY

The FNPRM incorrectly states that "nongovernmental restrictions would appear to be directed to aesthetic considerations." It is certainly true that aesthetic considerations play a part, but it is by no means the only concern. Nor are aesthetic considerations trivial -- the appearance of the building directly affects its marketability. People generally prefer to live and work in attractive buildings, and the sight of hundreds of satellite antennas bolted to the outside of apartment units would not be appealing to present and future tenants. Thus, in the apartment market, aesthetic considerations are actually economic considerations.

STRUCTURAL AND SAFETY CONDITIONS

The indiscriminate placement of antennas on the exterior of our buildings may also create structural hazards. For instance, the weight or wind resistance of an antenna installed improperly on a balcony railing may weaken the railing, thus creating maintenance problems and -- more importantly -- a hazard to the safety of tenants, building employees, and passers-by. Antennas mounted directly on a wall will require the drilling of holes; if improperly sealed, water seeping into the holes may create structural deficiencies. There are many mechanisms that could cause such damage, including expansion upon freezing, corrosion of metal mounting elements,

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W. F. Caton, Jr.
Acting Secretary

seepage into the interior of a building, or weakening of concrete through chemical reaction with substances carried in by the water. All of these possibilities will create new maintenance and repair costs that we will have to pay, plus safety hazards previously referred to.

TENANT FRUSTRATION

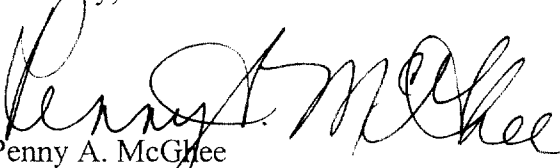
The technical limitations of satellite technology will create management problems because not all of our tenants may be able to receive certain services. When tenants on the south side of a building start subscribing to DBS, but tenants on the north side cannot because there is no place to position an antenna to receive the signal, we will have to deal with the complaints. We will be powerless to address the situation, but will suffer increased costs as angry tenants and tenants place additional demands on management or move to other buildings.

CONCLUSION

We urge the FCC to avoid interfering in our relationships with our tenants. All of the potential problems we cite will affect our bottom line and our property rights.

Thank you for your attention to our concerns.

Sincerely,



Penny A. McGhee
Property Management and Leasing Specialist

PAM/kap